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Copyright Questions and Answers-May a federal government library photocopy an entire issue of a journal in order to bind a complete volume?

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use of a specific form for a particular situation. You should **ABSOLUTELY NEVER** give any interpretation or advice about the law or about legal opinions. In other words, the librarian must not do legal research or give advice about any kind of legal issue.⁴ As Brown indicates, the penalties for UPL can be severe.⁵

In order to avoid UPL, librarians should show the patron the text of a requested law or give him or her a book dealing with the subject in question. We can safely send the patron to the right place, give him or her the location of the information, check library holdings and materials, assist in locating material, and provide an explanation about how to use a digest or index. The patron, not the librarian, must personally go to the index or digest. He or she must personally select the proper form, case, or statute, as well as using Shepard's Citations. The patron, not the librarian, should interpret and draft all legal documents.

So how do we do our jobs as librarians without falling into the UPL trap? Should we just avoid all questions involving the law entirely? Of course not! There are three main types of questions that most librarians encounter in the library—directional questions, holdings questions, and reference questions. It is only if the reference question goes too far that UPL becomes a problem.

Directional questions involve a patron asking about the location of a library material or the location of something in the facility. Besides the most frequently asked question—"Where is the restroom?"—some examples of questions include:

- Where do I find the *Federal Reporter*?
- Where is the *Code of Federal Regulations* located?
- I need to look at section 231 of the *Minnesota Statutes*.

Holdings questions involve a patron trying to find out if the library owns a particular item. These questions involve using the library catalog to answer the question. Some examples include:

- Does the library get the *University of Toledo Law Review*?
- What is the call number of *West's Bankruptcy Reporter*?
- How far back does the library have the *ABA Journal*?

There is no problem in answering these questions.

A reference question involves the use, recommendation, or instruction in the use of information sources, including books, Internet, and databases. There is a very thin

line between answering a reference question and answering a legal question, but the distinction can be made. Some examples of reference questions include:

- I'm looking for cases on the right to die.
- I need to find the Minnesota statutes on driving while intoxicated.
- How do I use the *Federal Practice Digest*?
- I need help with **Lexis, Westlaw, Internet, or CD-ROMs**.

You can safely send patrons to the right place, give them the location of books, and provide an explanation about how to use the materials, but the patron must select the proper form or case or statute. For example, suppose that a patron came into the law library and said that he had an order from a Judge for a jury trial to begin on a certain date. His adversary's counsel withdrew from the case five days before the trial. The patron asked "Isn't the Judge's order for a trial date more important? He can't do that—he is violating the Judge's order." You can **NOT** tell the patron any information about continuances or withdrawal of counsel, even though

you may know the answer. The most that a librarian can do is to show the person the rules of civil procedure, digests, legal encyclopedias, and other sources. The patron must read through the books personally to find the law.

There is controversy about UPL, and some scholars believe the whole idea is overblown. For example, Paul Healey in his excellent article "Chicken Little at the Reference Desk: The Myth of Librarian Liability,"⁶ expresses the opinion that UPL is more myth than reality. However, it is still important for librarians to understand how far is too far. Some of the following scenarios may help explain what librarians may do and what we may not do.

- A Certified Public Accountant who researched case law before having a meeting with the Internal Revenue Service engaged in the practice of law. *Agran v. Shapiro*, 273 P.2d 619 (1954).
- A man was found to have practiced law when he showed someone a motion to quash and told the person to go to the library and look at form books.

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Questions & Answers Copyright Column

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QUESTION: *An instructor has an old 16mm film published by Southern Bell Telephone and Telegraph Company. He wants to put it on videotape to use for his class, and to preserve it. Is this infringement? Should he contact AT&T archives?*

ANSWER: According to the Copyright Act, only a library or archives may convert the format of a work for preservation purposes. Before that may be done, section 108(c) dictates that the library first try to purchase a copy in the desired format at a fair price. If it is not available, then for preservation, a library may reproduce the videotape. So, your library probably does have to contact Southern Bell to try to obtain another copy since it appears to be the publisher.

It is possible that under fair use a faculty member might copy the entire film to a new format, but the law is less clear about whether that might constitute infringement as opposed to when a library does the preservation.

QUESTION: *May a federal government library photocopy an entire issue of a journal in order to bind a complete volume? The library has a subscription to the journal and*

has all of the issues for the year except one. That issue was received but was lost.

ANSWER: The answer is yes. Again, under section 108(c), if the library first tries to buy that missing issue and it is no longer available, or is available but not at a fair price, then the library may reproduce it for its collection.

QUESTION: *An academic library was contacted by a person not affiliated with the university requesting loan of a copy of a PBS video which is no longer in production and which he was unable to obtain from them. A faculty member here does not want to risk losing the video by loaning it. May the library copy the video to loan to him?*

ANSWER: Unfortunately, this is not what is meant by preservation in the copyright law. It is infringement to duplicate videos for someone just to loan them. In fact, only under the preservation sections can libraries copy videos at all! Section 108(b) applies only if the video is unpublished, and section 108(c) applies only when the library's copy has been lost, damaged, stolen, deteriorated or is obsolete.

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QUESTION: *A faculty author wants to use some wonderful wedding photos from the 1940s and 1950s which he found in the state archives. They seem to have been originally published in the local newspaper's society section, then somehow wound up in the archives. It would be very difficult to trace these people 40 or 50 years later, but the author wants to use the photos in a book.*

ANSWER: This is a fairly complicated issue which may just boil down to whether the faculty author is willing to assume the risk. Interestingly, in U.S. copyright law it is not the subject of the photos who owns the copyright but the photographer. Since these were published in the newspaper, you would need to find out if the photos were taken by a newspaper staff photographer, in which case the newspaper would own the copyright, or by regular photography studios. If the latter, the photographer owns the copyright.

The copyright would have expired 28 years after publication unless the copyright holder renewed the copyright for an additional 28 years (this has now been expanded to 67 years). To trace this by date, see my chart called "When Works Pass Into the Public Domain." <url> <http://www.unc.edu/~uncclng/public-d.htm>.

After all of this, however, it is highly unlikely that any photographer from that long ago or his or her heirs would be around to complain. So, you might well decide to assume the risk.

QUESTION: *If an instructor puts on reserve a journal reprint that she purchased, is it permissible to keep it or reserve for more than one semester without copyright permission? Does the first sale doctrine apply?*

ANSWER: If the professor paid for the reprint or paid royalties, then the library is not further reproducing it by putting that one reprint on reserve. It is a purchased item just as if the library itself purchases a book and places it on reserve. Therefore, the more than one semester limitation from the ALA Model Policy on Library Reserves does not apply. Under the first sale doctrine, found in section 109(a) of the Copyright Act, the owner of a lawfully acquired copy of a work may dispose of that copy as he or she wishes. This would include putting it on reserve in a library. 

And They Were There — Reports of Meetings

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20th Annual Charleston Conference: Issues in Book and Serial Acquisition: Is Bigger Better?

Report by **Janet L. Flowers**
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The title of this conference was certainly a timely one as the scholarly communication community has witnessed numerous mergers and acquisitions within the publishing, vending and library communities within the past several years. In addition, there are numerous new packages or aggregations of e-resources. **Nancy Eaton**, Dean of University Libraries at Penn State, gave the keynote address where she noted that disruptive technologies are introducing new waves of individualism and creativity in the production, distribution, and use of scholarly works. They also are leading to volatile market turbulence. This is characterized by the almost daily announcements of shocking changes in the relationships of those in the scholarly information chain. The hot announcement at this conference, of course, was the bid by **Reed Elsevier** and **Thompson** to purchase various parts of **Harcourt Publishing**.

Cindy Cunningham, from **Amazon.com** (and a former librarian), talked on the topic of whether libraries should be more like **Amazon.com**. She applauded the customer focus of the company for which she works and urged librarians to be equally as focused. She noted changed expectations from customers that include exhaustive access, 24/7 service, affordability, an easy starting point to all resources of interest, and an interactive environment. She reported that **Amazon** uses an approach which has been dubbed in Website design parlance as the "soft landing," i.e., a point at which the customer knows where he or she is and can easily be oriented to other relevant links. She also touted **Amazon's** relevance searching and similarities features and suggested their consideration by libraries. She urged librarians in the audience to be creative and think of ways that libraries could adapt some of the features of the dot.com companies, while recognizing that there are issues, such as privacy, that must be addressed. She was well aware

of resource constraints, but noted that there is a clear shift in focus within libraries to online services and a desperate need for more user surveys to determine behaviors, needs, and preferences.

A very hot topic at the conference was the status of e-books. Two sessions, in particular, were quite good. **Rick Lugg** and **Ruth Fischer** of **R2 Consulting** delivered the first: "E-books for Librarians: Mapping a New World." They showed that e-books can be made available in various ways: PC-based readers, PDAs (personal digital assistants), dedicated e-book readers, and via the Web. Likening the current environment to that of a gold rush, they detailed some of the predictions regarding the volume of e-book business expected within the next five years. For instance, an **Association of American Publishers/Anderson Consulting** study predicts that e-books will comprise 10% of the overall book market, or \$2.3 billion within 5 years. They then demonstrated a dynamic map of the current e-book world that they developed using **Inxight** software. Using original content as their center and users as the perimeter, they traced the many routes that conversion, distribution, rights management, content discovery, and delivery can take in this rapidly emerging field. They looked at who is selling in the field now and how they are approaching their business and customer models — to serve both libraries and consumers. They described the market as very much a learning environment with much experimentation underway.

They closed with these thoughts from **Jason Epstein** in the November 2, 2000 issue of the *New York Review of Books*: "These new technologies will alter the way books are transmitted, but the author's task will remain essentially the same as when **Homer** sang the *Odyssey* and **Dickens** presented his novels, chapter by chapter, before enchanted listeners. So too will the experience of readers re-

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